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TRUCE TO ARGUMENT IN THE MAGOON CASE

(Continued from page 1.)

ness tried to recollect how the whole of the $6000 he drew from the bank was expended. In the first place, out of the famous $48,025, $8025 was segregated to be subject to check. There was a debt of $2000 with interest to Dreier, $500 to McCants Stewart, $130 and some odd for land tax, he didn't remember how much income tax, the water rates, $2000 paid in Magoon's office and a few little bills he could not place just now.

Q.—Was that $387.50 paid out of that money?

A.—No, Your Honor.

THE RECEIPT.

Mr. Andrews here offered in evidence the receipt of Magoon to Sumner for the $4000. It was incorrectly dated July 26 for June 26, as came out, and was in full for "all past services" as well as "all litigation now pending."

The Attorney-General now rested.

MAGOON OPENS HIS DEFENSE

Mr. Magoon, addressing the Court, said: "If this was a case in which I was acting for anyone but myself, I should move at this stage that the action be dismissed, for there is not the remotest proof of the allegations. As I am the respondent, however, I shall take the stand and give opportunity to bring out anything that may be wanted."

RESPONDENT TESTIFIES.

John Alfred Magoon, examined by J. Lightfoot, stated he was an attorney at law; graduated from Ann Arbor University in 1885; had been practicing law ever since.

It was about 10 o'clock when R. W. Davis returned with $6000; I asked that $2000 be kept out for my fee; left F. Wundenberg in charge of office; McCants Stewart was there; enter all money matters in a book; keep a cashier.

REQUEST FOR RECEIPT.

R. W. Davis came about two weeks ago and said Sumner had a receipt from Geo. A. Davis and they ought to have a receipt from me. I gave a receipt for $2000, being the balance of fee of $4000; before doing it asked Miss Low to give me the date of payment. Davis said I had better receipt for the $4000; told him the check was a receipt for $2000, but if he preferred it the other way I would give it to him. I made no entry in Mr. Sumner's book at all.

ADMISSIONS CONCEDED.

Mr. Lightfoot asked if the Attorney General would admit that Magoon would testify to all the various things in his answer.

Justice Galbraith asked were all those things material.

Attorney General Andrews said he was just going to say he would admit the statements as evidence for respondent so far as they were material.

Cross-examined by Mr. Andrews—Have been attorney in two suits to put Mr. Sumner under guardianship; don't know that I was attorney for Sumner in the receiver suit, except by courtesy of Mr. Kinney; think I had no active part in case; my name was attached to two petitions for placing Sumner under guardianship as an insane person.

Deed of trust by Sumner to R. W. Davis was prepared at my office; it was acknowledged at Sumner's house; Mr. Peters, Mr. Wundenberg and myself went with Mr. Burnette. Had several conversations with Mr. Stewart but never gave him any reason to believe that I did not consider R. W. Davis a proper party to the trusteeship suit. Recollection is that Stewart told me he did not consider R. W. Davis a party. Did not say anything in the Circuit Court about the trust deed to R. W. Davis; there was no occasion for my saying anything about it. Probably advised R. W. Davis that it was not necessary to record the deed. Did not know about the cancellation of the deed; was informed that it had been canceled; could not remember date of information; it was not canceled through our office; think my first information that the deed was canceled was from Mr. Humphreys's brief.

UTTERLY FOREIGN.

Ropert suit was for a new trust deed. Sumner's new deed to R. W. Davis had nothing to do with the original trust deed; didn't affect it in any manner whatever. It didn't affect the litigation in any way; if I had thought, as a matter of law, that the Davis deed had anything to do with the suit, I should have disclosed it.

To Justice Galbraith—Heard from Geo. A. Davis that it was Mr. Sumner's wish to have entire control of his estate, that therefore he did not want this new trust deed and this was why it was canceled. Have not a distinct recollection about the cancellation of the deed; I had nothing personally to do with it.

To Attorney General—In receiving payment of $4000 from Mr. Sumner witness said he considered all of his services, which he forthwith began to recount. First he had got the money from the Bishop; attended to payment of $10,000 to the Bishop for the church, canceled the will, deposited the money for Sumner; agreed to make out a deed of the property to Sumner, which he did—that is, made a draft of it.

NOT LONG JOB.

Mr. Andrews—Most of these matters were attended to in half an hour?

Mr. Magoon —It was not a long time, might have been half or three-quarters of an hour.

Q.—It did not take a great amount of brain power to cancel the will?

A.—Well, it takes the usual amount of skill to do it properly. Some would do it by burning; I preferred to cancel it by writing across the face of the will.

MANIFOLD SERVICES.

The remainder of Mr. Magoon's cross-examination was divided between the Attorney General and the Court. It brought out a long category of services the respondent had rendered Sumner, together with his estimates of their value as gauged by what he would charge others.

For defending Sumner in Ah In's suit for $2700 and interest he thought $250 would be fair, and to carry it through the Supreme Court and a retrial about $500.

Q.—In ordinary assumpsit suits do you ordinarily receive a fee of $250?

Witness answered with a statement that Mr. Schweitzer paid a fee of $400 in a case where a less amount than that was involved. He seldom went into the Supreme Court less than $100; sometimes he would ask for $1000.

To Justice Perry he said he did not tell Sumner he would appear for him if the Supreme Court should order a new trial of the latest W. S. Ellis suit.

SETTLED STEWART.

Witness said there were a great many other things, for instance a settlement of McCants Stewart's fee. Stewart was associated counsel in the Ah In case. He thought Stewart wanted $750.

At this point the attorney named was heard murmuring where he sat at the side door, and next thing he came forward uttering contradictions to the witness.

Justice Perry asked Stewart if he were addressing the Court, when the attorney apologized and confined his intervention to a word or two whispered to the Attorney General.

Witness said Sumner did not want to pay Stewart anything, but he advised Sumner to pay him $500. Could not remember the items of Stewart's bill but Sumner asked him to investigate it. In answer to Justice Perry he said this business cost the time of "several conversations," and might have taken a day.

"Was it twenty-four hours?" the Attorney General asked.

Lawyers do not ordinarily work twenty-four hours," the respondent answered with some asperity.

STILL MORE WORK.

Respondent had consulted with Lewers & Cooke's bookkeeper about a lumber bill; advised with W. M. Campbell, builder of Sumner's house; Campbell was not his client, though he drew up deeds and mortgages for him.

"Anything else, Mr. Magoon?"

In answer to this question the respondent emphatically ventured a vindication of his charge to Sumner.

SELF-VINDICATION.

"I will simply say right now," was his declaration, "that for the Ropert-Sumner suit alone that fee of $4000 was a fair fee. I would not take $5000 for the same work from any other man. It has nothing to do with Geo. Davis's fee. I worked as hard as if Davis was not in it at all. Davis went out and told Sumner he could get that $48,025 for him, and he did all that was in his power for him, as I did all that was in my power.

MRS. DAVIS'S PAYMENT.

Witness admitted receiving $2500 in a former suit from Sumner and said he worked at it about ten days, but that had nothing to do with this case. As a legal proposition, Sumner had nothing to do with that money. Geo. Davis got it for Mrs. Maria S. Davis from B. F. Dillingham to procure the signing of the deed to the harbor property.

THE BIG FEE.

"It is true Sumner offered me $2500 for my fee," witness replied to a question. "He came to me to talk about my fee. Up to that day I never had said anything about my fee. He asked me what I wanted and I said I would prefer to leave it to him. His offer of $2500 was a surprise to me, for I thought he would offer me more than $4000. He never said a word when I proposed $4000 but that it was all right, and he drew a check for $2000, the other $2000 coming from cash brought back by Wyllie Davis. It was the most trying litigation in which I was ever engaged during all my practice as an attorney. Sumner relied on me as his attorney. I wrote two receipts; made a mistake and put July instead of June."

QUIZZED TO FINISH.

Justices Galbraith and Perry, during most of Mr. Magoon's further time on the stand, kept up a running fire of questions. Justice Perry prodded his recollection of two cases in which he had appeared on the side of Sumner's insanity. In the Crandall case he was chief counsel, with Mr. Kinney as associate; in the receivership, Kinney was chief, and witness advised him Sumner was not a person contemplated as insane by the law, but one liable to be imposed on. The latest occasion, 1902, was entirely different from the former ones, as many people changed sides on the question of Sumner's mental condition. He had read the latest decision of the Supreme Court, with its finding that Sumner was of weak mind.

REMUNERATION AGAIN.

Justice Galbraith asked if respondent had not in mind the payment of $2500 to Geo. Davis when he asked for $4000. He answered that the entire $6000 would not have been an unreasonable fee for the work. Davis did not get enough if he had done all the work himself. He would have considered $5000 right for himself.

Justice Galbraith—Then the reason you asked Sumner to fix the fee was that you thought he would give you more than $4000?

Magoon—Yes.

OTHER POINTS.

Respondent delivered a psychological discourse on Sumner's condition, the point of which was that he was very firm when he set his mind on anything.

The decree by Judge De Bolt, dismissing the insanity petition, was not made until after the settlement between the parties. Geo. A. Davis wrote the decree. Sumner was on the stand several days and it was Judge De Bolt's opinion that he was sane.

Mr. Lightfoot conducted a further direct examination to bring into relief certain things in the answer.

To further questioning by Justices Galbraith and Perry, the respondent said he could not remember whether he or Peters drew up the deed of trust. He must have advised about it. The drawing up of a deed of trust or a will was one of the chief tests of a lawyer's ability, he said in the same connection. He would not say that item of his work was worth $500, he just lumped all together.

The settling of Stewart's fee was worth $25; the Lewers & Cooke business, $50.

He did not charge a client for every day he went into court.

The matter of time was not the thing in drawing the trust deed, it was the work.

The Campbell case against Sumner witness admitted went by default.

Respondent stated what he would charge for various items of law office work.

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